

TEBONI & 2 OTHERS -v- SAWANE

High Court of Solomon Islands

(Palmer J.)

Civil Case No.25 of 1991

Hearing: 26 April 1993

Judgement: 12 August 1994

J. Wasiraro for Plaintiff

A. Nori for the Defendant

PALMER J.: On the 14 May 1993, this Court directed the Malaita Local Court to make determinations on the following questions:

- (1) Is Kalagwata Island jointly owned or separately owned?
- (2) Who are the owners?
- (3) What are the boundaries of the owners?
- (4) On whose land was the shipyard in which the ship Vele was constructed?
- (5) On whose area of the land is the Defendant carrying out shipbuilding now?

The above five questions were requested by the Court on the grounds that it felt there was insufficient evidence before it to deal with one of the claims of the Plaintiffs as raised in the Writ of Summons and Statement of Claim filed on the 8th February 1991.

Paragraph 8 (a) of the Statement of Claim reads:

*"And the Plaintiff claim: (a) An injunction restraining the Defendant and his agents from using the Island for any purposes whatsoever and requiring the Defendant to close the shipyard and to remove all property belonging to him or his agents from the Island."*

At page 6 of the Court's judgment dated the 14th May, 1993 civil case 25/91, the Court stated:

*"On the question of injunction, an important issue of ownership and the respective boundaries of the plaintiffs and Ramoiluna needs to be addressed.*

*A diagram marked exhibit 3 in the court's list of exhibits was drawn by the defendant and purports to show that the area of land in which the first defendant built his first ship belonged solely to Ramoiluna. The plaintiffs deny this. They allege that Ramoiluna's area is only about 20 feet by 20 feet. They say that the shipyard encroaches onto their respective lands and accordingly they are also entitled to rent."*

The Court found that there was not enough evidence before it to make a decision as to the question of an injunction, as the question of boundaries and ownership of the various plots of land was disputed. The court was also of the opinion that there may be issues of custom raised and hence the direction to the Malaita Local Court to make findings on the questions posed by this court.

The Malaita Local Court sat at Auki on the 3rd March 1994 to hear evidence from the parties; carried out a survey of the Island on the 8th March 1994, and submitted its findings to this Court by letter dated the 7th April 1994.

I have now had the opportunity to consider the findings of the Malaita Local Court and having satisfied myself that there is sufficient evidence before me to deal with the claim for an injunction, I make the following judgment.

I am satisfied on the evidence that there were two shipyard construction sites. One of the sites was where the M.V. Marona was constructed. The block on this site measured approximately 80 feet in length and 20 feet in width. The evidence showed very clearly that one part of this block which measured 43 feet by 37 feet belonged to Timeos Teboni, the first Plaintiff. The other half measuring 37 feet by 20 feet belonged to Thomas Ilalatofea, the second Plaintiff.

In its judgment of the 14 May, 1993 (cc25/91), the Court had found that the first plaintiff's stone wall had been purchased for the sum of \$600.00 (see pages 4 and 5 of the said judgment).

Also in the same judgment at pages 5 and 6, the Court had found that consideration had been provided by the defendant for the use of the second Plaintiff's stonewall or block by providing free passages for the second plaintiff and his family when travelling in the Defendant's other ship, the M.V. Suinanita. Accordingly, the Plaintiffs' claim in respect of this shipyard were denied.

The shipyard which is now of relevance to the issue of whether an injunction should be issued was the shipyard on which the first ship, the M.V. Vele was constructed and measures 80 feet by 20 feet. That shipyard is now also the site of the construction of a new ship but has had to be halted pending the outcome of these proceedings.

#### THE EVIDENCE:

In the evidence before this court as adduced in the hearing held at Auki on the 26th of April 1993, in his examination in chief, Thomas Ilalatofoea stated that Ramoiluna owned one side of the stone wall at Kalagwata Island. He stated however, that it was 20 feet by 20 feet in size.

In contrast, the evidence of the defendant was consistent that the stonewall belonged to Ramoiluna. He stated that he was told by the first Plaintiff that that particular stone wall belonged to Ramoiluna. The second Defendant also filed an exhibit marked '3' in which a diagram of the various blocks of the Plaintiffs and Ramoiluna were outlined and the location of the shipyards that had been constructed. That diagram is consistent with the diagram drawn by the Local Court made from its findings from the survey done on the 8th March 1994.

In its findings, the Local Court held that the block on which the Defendant was now building a new ship had been built by Ramoiluna and his father. The Local Court pointed out in its findings that when the Defendant was trying to find out who was the owner of that block, he was told by the first and third Plaintiffs that that block was owned by Ramoiluna. The Local Court also found that the agreement between Ramoiluna and the Defendant was made in the presence of the first and third Plaintiffs. The Local Court noted in particular that if the first and third Plaintiffs were the owners of that block, then they would not have passed on a message to Ramoiluna to come and see the Defendant about that block. In his evidence under oath Ramoiluna stated that it was the third Plaintiff who had called into his house and told him that the Defendant wanted to see him about his stone wall. This has been virtually unchallenged by the Plaintiffs.

Having considered the evidence as contained in the Local Court Record of Proceedings together with the survey report of the 8/3/94, the findings of the Local Court, together with the evidence as adduced before this Court in the hearing at Auki on the 26th of April, 1993 and the submissions made by learned Counsels, I am satisfied that the sole owner of the block on which the M.V. Vele had been constructed and where a new ship is currently been built was Ramonuma. The claim for an injunction to restrain the Defendant from entering onto Kalagwata Island for the purposes of working on the construction of his ship on Ramonuma's block accordingly must be denied.

In the judgment of this Court on the 14th May 1994, the question of costs was not mentioned. I now allow costs against the Plaintiffs.

(A.R. Palmer)  
JUDGE